IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jorawar Singh v. State of Raj. & Ors.

(1)S.B.CIVIL WRIT PETITION NO.2424/2001

Dharam Veer Singh v. State of Raj. & Ors.

(2)S.B.CIVIL WRIT PETITION NO.2435/2002

Saral v. State of Raj. & Ors.

(3)S.B.CIVIL WRIT PETITION NO.4131/2001

Vishna Ram v. State of Raj. & Ors.

(4)S.B.CIVIL WRIT PETITION NO.4132/2001

Smt. Mohini Devi v. State of Raj. & Ors.

(5)S.B.CIVIL WRIT PETITION NO.4136/2001

Khema Ram v. State of Raj. & Ors.

(6)S.B.CIVIL WRIT PETITION NO.4137/2001

Manohar Singh v. State of Raj. & Ors.

(7)S.B.CIVIL WRIT PETITION NO.4138/2001

Smt. Mira Devi v. State of Raj. & Ors.

(8)S.B.CIVIL WRIT PETITION NO.6463/2003

Writ Petitions under Articles 226 and 227 of the Constitution of India.

Date of Order : 20th July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.S.Saluja, for the petitioner(s).
Ms. Vidhyawati Bora, Dy.Govt.Advocate.

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BY THE COURT :

The controversy involved in all these petitions is based on similar facts, therefore, all these petitions are heard together and decided by this common order.

SCHEME UNDER THE STANDING ORDERS FOR HOLDING DISCIPLINARY PROCEEDINGS

All the petitioners are workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 and are in employment of Department of Forest, Government of Rajasthan. The service conditions of the petitioners are governed by the standing order for work charted employees working in the Department of Forest, 1973.

Chapter XV of the Standing Orders referred above pertains to provisions for discipline and appeal. Order 50 of the Standing Order prescribes eight punishments which can be imposed upon a work charged employee of the Department of Forest for good and sufficient reasons. The punishments shown at Sr.No.1 to 5 in Order 50 are minor punishments and the punishments shown at Sr.No.6 to 8 are major punishments. Clause (51) prescribes the authority competent to impose the punishments provided under

Order 50 of the Standing Order. A detailed procedure is given in under Order 53 which is required to be adopted while imposing major punishments, those are, reduction in rank, removal from service and dismissal from service. According to Rule 53 the disciplinary authority at the first instance is required to frame definite charges against a delinquent employee and is also required to serve a charge sheet upon the employee concerned seeking his explanation with regard to misconduct charged within a period of seven days from the date of service of charge sheet. The disciplinary authority shall after considering the explanation submitted by delinquent employee is required to pass an appropriate order either for appointment of inquiry officer or to drop the proceeding sought to be initiated as the case may be. If the disciplinary authority decides to proceed with inquiry he shall then provide a reasonable opportunity of hearing to the workman to defend himself. The procedure relevant for holding inquiry as provided under sub-clauses (3), (4), (5), (6), (7), (8) and (9) of Order 53 of the Standing Order, 1973 read as under:-

> "53{3}.- यदि कर्मकार व्यक्तिगत सुनवाई के लिए कहता है या यदि पदावनत करनें, सेवा से निष्कासित करने, या सेवा से बर्खास्त करने का आदेश जारी करने का सक्षम अधिकारी यह विचारता हो कि कर्मकार की व्यक्तिगत रूप से जॉच की जानी चाहिए तो वह विभागीय जॉच कराएगा । कर्मकार यदि चाहे तो अपना वाद किसी सह कर्मकार की सहायता से

प्रस्तुत कर सकता हैं । कर्मकार की सक्षियों की जिरह समेत उसके बचाव के लिए पर्याप्त उचित सुविधाएँ प्रदान करेगा ।

{4} अपने बचाव की तैयार के प्रयोजनार्थ कर्मकार को ऐसे अभिलेखों का जिनका वह उल्लेख करें, निरीक्षण करने व उनका उद्धरण लेने की स्वीकृति दी जाएगी वशर्ते कि ऐसी आज्ञा देने से मना भी किया जा सकता है, यदि लिखित में अभिलिखित किए जाने वाले कारणों से, उक्त अभिलेख उन प्रयोजनों से सम्बद्ध नहीं हो ।

{5} ऐसी जॉच में निश्चित आरोप बनाएँ जायेगें तथा प्रत्येक अपराध के बारे में जिन्हें कि उसने स्वीकार नहीं किया है, कर्मकार को स्पष्ट किया जाएगा तथा उसके समर्थन एवं बचाव के साक्ष्यों को ऐसी साक्ष्य के साथ जिसे वह बचाव में जोड़ना चाहे, उसकी उपस्थिति में अभिलिखित करेगा ।

{6} जॉच की रिपोर्ट तथा प्रत्येक आरोप पर उसके कारणों सहित जॉच निष्कर्ष {फाइन्डिग्स} तैयार किये जाएगें ।

{7} जॉच की रिपोर्ट पर विचार किया जाएगा तथा प्रत्येक आरोप पर जॉच निष्कर्ष अधिलिखित किया जाएगा ।

{8} कर्मकार को रिपोर्ट एवं जॉच निष्कर्ष दिए जाएगें तथा उसके विरूद्ध की जाने वाली प्रस्तावित कार्यवाही का एक नोटिस दिया जाएगा तथा उससे उसमें विनिर्दिष्ट समय के भीतर ऐसा अभ्यावेदन {रिप्रजेन्टशन} प्रस्तुत करने के लिए कहा जाएगा जिसे वह प्रस्तावित कार्यवाही के विरूद्ध प्रस्तुत करना चाहे ।

{9} इसके बाद प्रस्तुत किए गए अभ्यावेदन पर विचार कर उपयुक्त आदेश यदि कोई हो, जारी किए जाएगें तथा कर्मकार को लिखित में सूचित किए जाएंगें । परन्तु यह है कि दण्ड देते समय सेवा से निष्कासन या सेवा में बर्खास्तगी या पदावनति का आदेश जारी करने में सक्षम

अधिकारी कर्मकार के अपराध की गम्भीरता, उसके पूर्व अभिलेख यदि कोई हो, पर तथा अन्य घटने या बढ़ने वाली परिस्थितियों पर जो हो सकती है, विचार करेगा ।"

Order 59 of the Standing Order, 1973 provides remedy of appeal to the workmen in event of having any grievance with the orders passed by the disciplinary authority under Order 50 of the Standing Order. The Standing Order of 1973 in the manner stated above provides a valuable right to the work charged employees of the Forest Department to have an opportunity to defend themselves in event they are subjected to disciplinary proceedings. The employer is under obligation to adhere the procedure prescribed under the Standing Order before imposing a punishment prescribed under the Standing Order of 1973.

In the instant petitions the sole grievance of the petitioners is that a major punishment is imposed upon them without adhering the mandatory procedure for to do so.

FACTS PERTAINING TO THE PETITIONERS

All the petitioners were in employment of Department of Forest of Government of Rajasthan in the office of Dy. Conservator of Forest, Indira Gandhi Nahar Pariyojna, Stage-II, Division-I, Bikaner. All the petitioners were served with a memorandum under

Order 50 of the Standing Order of 1973 along with a statement of allegations on 14.9.2000. The petitioners were charged for creating hindrance in official working and also for indulging in indiscipline. All the petitioners in response to the memorandum dated 14.9.2000 submitted applications to the disciplinary authority making demand for supply of certain documents with view to defend themselves effectively. The disciplinary authority without supplying all those documents decided to proceed with inquiry against the petitioners. The petitioners reiterated their request for supply of documents but of no consequence. In these circumstances, the petitioners ultimately submitted their explanation to the disciplinary authority at quite a later stage. According to the facts stated in the petitions the respondent employer without holding any inquiry just on basis of explanation submitted by the petitioners passed the order impugned dated 22.12.2000 imposing a punishment of dismissal upon them. The disciplinary authority while imposing punishment relied upon the findings arrived at by the authority concerned while holding preliminary inquiry.

The petitioners being aggrieved by order imposing punishment dated 22.12.2000 preferred an appeal before the appellate authority i.e. The Conservator of Forest, Indira Gandhi Nahar Pariyojna, Stage-II, Bikaner in accordance with Order 40 of the

Standing Order of 1973. The appeal preferred by the petitioners came to be rejected by the appellate authority on 13.3.2001, hence the present petitions are preferred by the petitioners before this Court under Articles 226 and 227 of the Constitution of India.

A reply to the writ petition has been filed on behalf of the respondents. It is contended by the respondents that the petitioners by entering into a conspiracy attacked upon respondent No.4 Shri Mahaveer Singh who was working as Assistant Forester in the office of the respondent No.2 in Gr.VII and inflicted grievous injury on his head on 9.10.1999. A criminal case was lodged against all the petitioners at police station Bajju by FIR dated 9.10.1999 bearing No.179/99 for commission of offences under Sections 341, 332, 353 and 147 IPC. It is also stated by the respondents that before taking any action against the petitioners adequate opportunity was given to them to defend themselves. According to the respondents the entire inquiry was conducted by the authority competent in accordance with the provisions of Order 53 of Standing Order of 1973 and the orders passed by the disciplinary authority as well as by the appellate authority are sufficiently speaking orders and the findings given by them are supported by reasons.

Heard counsel for the parties.

The first contention of counsel for the petitioners is that the disciplinary authority by order dated 22.12.2000 imposed a major punishment i.e. of dismissal from service upon the petitioners without adhering the procedure prescribed under Order 53 of the Standing Order of 1973.

I have scanned the order dated 22.12.2000 passed by the disciplinary authority imposing punishment of dismissal from service upon the petitioners. From reading of order of disciplinary authority it is apparent that the same has been passed by the disciplinary authority on basis of explanation submitted by the petitioners in response to the charge sheet. The disciplinary authority mainly relied upon the statements recorded during the preliminary inquiry. In fact no inquiry as required under Order 53 was ever conducted. The disciplinary authority in entire order no where discussed the evidence or material available with him procured during the inquiry to give a finding of guilt against the petitioners. By order impugned the disciplinary authority dealt with the explanations tendered by the petitioners in their explanation and by not considering those explanations sufficient imposed the punishment of dismissal from service. The order impugned refers for appointment of an inquiry officer but it no where mentions the manner in which inquiry

was conducted and also about the record and report of inquiry. In fact the order passed by the disciplinary authority is quite vague and does not appear to be an out come of an inquiry under order 53 of the Standing Order. It is apparent from reading of order dated 22.12.2000 that no inquiry as required under Order 53 was conducted by the respondents. Counsel for the respondents utterly failed to substantiate the averments contained in the reply that the procedure prescribed under Order 53 of the Standing Order of 1973 was adhered and reasonable opportunity to defend was provided to the petitioners before imposing punishment of dismissal. The respondents also failed to show any record with regard to holding of inquiry according to Order 53 of the Standing Order of 1973. In view of it the order passed by the disciplinary authority is not at all sustainable in eye of law.

It is also contended by counsel for the petitioners that the order passed by the appellate authority dated 13.3.2001 is not at all a speaking and reasoned order.

I do not find any reason for disagreement with the contention made by counsel for the petitioners as the order passed by the appellate authority even not contains the facts giving rise to the entire dispute. The appellate authority simply recorded that from perusal of record the workman is

found guilty of the allegations levelled against him and, therefore, the order passed by the disciplinary authority was proper. It is well settled that an appellate authority is required to deal with all the contentions raised by the delinquent employee giving challenge to the order imposing punishment. Beside the general principle Order 60 of the Standing Order of 1973 provides a detailed procedure to consider an appeal preferred by a workman giving challenge to an order imposing punishment upon him. The appellate authority is required to provide an opportunity of personal hearing to the workman concerned and further is required to pass an appropriate order by considering the contentions raised by the workman. The appellate authority in the instant case failed to adhere the procedure prescribed under Order 60 of the Standing Order of 1973.

As a consequence of discussion made above these petitions deserve acceptance. The same, therefore, are allowed. The orders dated 13.3.2001 passed by the appellate authority i.e. the Conservator of Forest, Indira Gandhi Nahar Pariyojna, Stage-II, Bikaner and the order dated 22.12.2000 passed by the disciplinary authority i.e. the Dy. Conservator of Forest, Indira Gandhi Nahar Pariyojna, Stage-II, Division-I, Bikaner are hereby quashed. The petitioners, therefore, are entitled to be reinstated in service with all consequential benefits.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.